

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR., et al.,)
)
 Plaintiffs,)
)
v.)
)
THE STATE OF ALABAMA, et al.,)
)
 Defendants.)

Case No.: CV 83-M-1676-S

**OBJECTIONS OF ALABAMA A&M UNIVERSITY TO THE TERMINATION
OF THE REMEDIAL DECREES**

As ordered by this Court on October 31, 2005, Alabama A&M University (“AAMU”) files its Objections to the termination of the Remedial Decrees in this action.

These objections identify the issues involving AAMU which must be resolved in order to fully accomplish the purposes of the Remedial Decrees and eliminate all unlawful vestiges of discrimination.

1. CAPITAL FUNDING

In its 1991 Decree, the Court found based on the evidence before it at that time that the capital funds necessary to eliminate vestiges of discrimination with respect to AAMU’s physical plant were \$10,628,306. 787 F. Supp at 1283. By the time the money was actually spent on AAMU’s facilities over a decade later, it had grown to approximately \$19 million. AAMU supplemented those funds with funds of its own and embarked on a \$27 million project to upgrade various aspects of the AAMU campus. (The “Normal Hill Project”). The Court approved AAMU’s initial plan and the final product of that Project.

Additional capital funds are necessary to eliminate the unlawful vestiges of discrimination and accomplish this Court's purposes. SKT, the architectural firm responsible for the Normal Hill Project, has estimated that the cost of needed renovations and repair to the AAMU facilities even after the Normal Hill Project is well over \$35 million. AAMU does not request this entire amount, but anything less will necessarily leave important items unfinished. AAMU requests additional capital funds on three grounds, set forth below.

A. In its 1995 Decree, the Court awarded AAMU new high demand programs in Mechanical and Electrical Engineering. These programs have been very successful in attracting highly qualified students and eliminating prior perceptions of AAMU as an inferior institution. While the Court ultimately ordered additional funds to cover some of the programmatic aspects of the new Engineering program for a period of time, it directed that the new Engineering building necessary for this program be funded out of previously awarded capital funds. AAMU respectfully suggests that this is logically inconsistent with the findings of the 1991 Decree. If the amount awarded in 1991 was necessary to eliminate vestiges of past discrimination, then use of a portion of those funds for the new Engineering building necessarily means that inadequate funds were left to accomplish the purposes of the first Decree.

The Engineering building at AAMU ultimately cost \$9.6 million. The Court did award \$2.845 million in additional capital funds for the building on March 3, 2000. However, that award was later subject to proration so that AAMU ultimately received only \$2.67 million pursuant to that Order. Consequently, AAMU has spent \$6.93 million for the Engineering building out of the previously awarded capital funds.

In order to eliminate the vestiges of discrimination targeted by the Court in awarding those initial funds, they must be made available in full to AAMU for capital improvements of its facility, subject of course to Court oversight and approval. Since those funds should have been available to AAMU beginning in 2001 for the Normal Hill Project, a reasonable allowance for a combination of interest and increased construction costs of 7% per year should be added to give a proper present value in 2006 of approximately \$9.7 million.

B. The Engineering program has been so successful that the new Engineering building which was recently constructed is now full to overflowing. When the Engineering building was constructed, costs were kept to a reasonable minimum because the funds for the building had to come out of previously awarded capital funds, so all projects were carried out with maximum cost efficiency due to the shortfall. That necessary budgetary restraint combined with the success of the program, has resulted in the need for an addition to the existing Engineering building. This perhaps would not have been necessary had the Engineering building been constructed with new funds awarded for that purpose, which would have allowed AAMU to make some allowance for growth beyond the absolute minimum. An addition to the Engineering building is estimated to cost approximately \$2 million.

C. AAMU also notes that the Court's 1991 award of necessity constituted only an approximation of the cost of the required facility improvements. It is notoriously difficult to accurately project the construction costs of current projects – it would have been all but impossible for the Court to be accurate from a distance of ten years. AAMU submits that the Court underestimated those costs, in significant part because the extent

of deterioration due to discrimination could not accurately be gauged until the work was actually begun. The Court-approved Normal Hill Project originally covered a specific list of items for a projected cost of \$27 million. However, the AAMU buildings (in particularly the dormitories) were in much worse condition than originally thought. Consequently, AAMU was forced to delete construction of a Physical Plant building, renovations to McCaleb Hall, renovations to Palmer Hall and some additional dormitory work. The cost of the deleted items which were initially included in the Normal Hill Project was approximately \$3.5 million in 2001. The present value in 2006 (again assuming 7% cost inflation and interest on funds) is approximately \$4.9 million. This is a reasonable value to place on the Court's understandable underestimate of the cost of eliminating the vestiges of discrimination.

Based on the foregoing, AAMU requests an award of additional capital funds to be paid in 2006 of \$16.6 million

2. DIVERSITY SCHOLARSHIPS

In the 1995 Decree, the Court made funds available to AAMU and ASU for ten years for scholarships to diversify the racial composition of the student bodies of those two HBU's. As the Court knows, a large number of scholarships have been given in connection with that program. Those scholarships have had a beneficial effect on the diversity of AAMU's student population and AAMU requests that the program be continued for at least another five years.

AAMU also asks that the scope of the program be expanded slightly, in connection with its contentions regarding Calhoun State, below. The 1995 Decree allows diversity scholarships only to "Alabama residents", defined as individuals who either

graduated from high school in Alabama or whose parents (or one of them) reside in Alabama at the time the individual attends college. AAMU wishes to attract both traditional and non-traditional students of other races to its campus. It has received applications (and in some instances has granted scholarships) to individuals who are significantly older than recent high school graduates. In some cases, although those individuals may have lived in the State of Alabama for a decade or more, they went to high school in some other state and their parents also reside in some other state. The definition of “Alabama resident” in the 1995 Decree does not accomplish the Court’s purposes when applied exclude to these non-traditional students from the diversity scholarship program. Therefore, AAMU requests that if the program is extended, that definition be expanded so that individuals who have resided in Alabama for a period of time unsupported by their parents can qualify.

Finally, there are individuals currently attending AAMU on diversity scholarships who have begun but not yet completed their matriculation. Even if the Court decides not to continue the entire program, AAMU requests that funds be awarded to reimburse AAMU’s costs for any individuals receiving a diversity scholarship who began attending AAMU in or before the Spring of 2005.

3. CALHOUN STATE COMMUNITY COLLEGE

In its 1995 Decree the Court placed limitations on the expansion of CSCC for a period of ten years in the Huntsville area to give AAMU an opportunity to attract non-traditional and other students to diversify its student body. AAMU requests that this prohibition on expansion be extended for at least another five years, which coupled with

the requested modifications to the diversity scholarship program will enable AAMU to further desegregate its student body.

4. ATHENS STATE

The Court's Decrees in this case have incorporated earlier Consent Decrees, including one between the United States and Athens State. That Consent Decree provided that AAMU would teach courses at Athens State leading to a Masters Degree in Education, and placed restrictions on Athens State's ability to independently offer graduate programs in education. AAMU asks that the restrictions contained in that Consent Decree be continued for at least another five years.

5. ENGINEERING

The 1995 Decree from the Court established and funded the new Mechanical and Electrical Engineering programs, and provided for significant increased "formula" funding for a fixed period of years, along with a new facility and funding for equipment, furniture, etc. The Engineering school has been a great success story at AAMU. AAMU understands and agrees that all of the Court-ordered programs must become self sufficient and be dealt with on the same basis as programs at other schools at some point. However, the end of the fixed period of Court-awarded additional funding has resulted in a precipitous drop in funds available for the Engineering school. AAMU suggests that a more gradual drop off would both be more fair and better enable the Engineering school to continue its growth and stand on its own feet as soon as possible.

AAMU requests that the additional "formula" funding previously ordered for the new Engineering programs be reduced 20% per year from the 2004-2005 level for five years.

6. AGRICULTURAL RESEARCH

The Court's 1995 Decree provided that AAMU was entitled to compete competitively for at least 10% of the state funding annually available to the Alabama Agricultural Experiment Station. AAMU has competed successfully for a significant portion of these funds – in fiscal year 2005 AAMU successfully competed for \$800,000 from this program. This source of funding is critical to continued research efforts at AAMU. AAMU thus requests that the provisions of the 1995 Decree allowing for AAMU's competition for 10% of this annual appropriation be continued.

Also, unlike Extension, no new legislation is in place with regard to Research. There is currently a \$300,000 line item for AAMU's research, which AAMU requests be continued by Court order until appropriate legislation covering this issue is passed and in place.

7. FACULTY SALARIES

The Court's 1995 Decree has had the unintended side effect of creating an artificial, two tiered system of faculty salaries at AAMU. The Court ordered the salaries of those involved with Extension equalized with their counterparts at Auburn, resulting in significant increases for those employees. Similarly, the Court appropriated extra funding so that the new Engineering school could pay competitive salary rates for Mechanical and Electrical Engineering to help insure the success of the Engineering program. While the court's orders in both Extension and Engineering have worked to advance the elimination of prior discrimination and have been critical to its overall plan, there has been a resultant drop of morale among other faculty members whose salaries remain artificially low because they are not in targeted areas. For example, it is difficult

to justify substantial variances between Civil Engineering faculty salaries and those paid to Mechanical and Electrical Engineering faculty.

AAMU submits that the significantly lower salary levels at AAMU and ASU when compared to UA and Auburn are themselves an ongoing vestige of prior underfunding and discrimination which the Court can and should correct. Consequently, it requests that the Court order funding sufficient for salary adjustments to bring the salaries of those not in the Extension and new Engineering areas more in line with their colleagues and with similarly situated faculty members at schools which did not bear the burden of *de jure* segregation.

8. DISCOVERY

AAMU does not anticipate significant discovery with respect to its Objections, which will be supported by more detailed factual submissions in accordance with the scheduling order to be entered by the Court. A period of ninety days should be sufficient for any such discovery.

WHEREFORE, AAMU objects to the expiration of the Remedial Decree in this case until the issues set forth above have been fully resolved.

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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